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an applicator removably mounted to the massage head, said applicator having a concave shaped cavity formed in it, and a connection tube attached to said applicator head in operative communication with the cavity, said connection tube capable of applying at least a partial vacuum to the cavity so as to draw and stretch fibrous tissue within the cavity and adapted to pass contaminants from the cavity;

a vacuum line connected between the connection tube of the applicator and the vacuum pump, said vacuum line drawing contaminants from the cavity through said connection tube; and

a control system mounted to the housing which is selectively operated to provide suction and vibration to the body through the applicator head.

#### REMARKS

Claims 1-7, and 9 were rejected under 35 U.S.C. § 112.

Claim 1 was rejected under 35 U.S.C. 102(b) as anticipated by Holt.

Claims 2-3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Holt.

Claims 4-5 were rejected under 35 U.S.C. 103 as being unpatentable over Holt in view of Howerin.

Claims 6,7,9 and 15-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Holt in view of Marshall et al. and Rohrer.

Claims 19 and 20 were rejected under 35 U.S.C. 103(s) as being unpatentable over the references applied to claim 18 and further in view of Howerin.

The claims as amended, are believed to correct the formal deficiencies noted by the Examiner, and to be novel over the art, and to be unobvious from the art in any combination.

With respect to the 35 U.S.C. 112 rejection, claim 1 has been amended to make it clear that it is the applicator and not the head which has a cavity formed in it. In addition, the claim is amended so that it distinguishes over Holt.

Holt, in Figure 3, shows an applicator which cannot possibly be used to draw and stretch the fibrous tissue of the human body within the cavity as required in claim 1. In addition, claim 1 and claim 15 require that the connection tube element be capable of applying at least a partial vacuum to the cavity in the applicator so as to draw and stretch fibrous tissue of the human body into the cavity. Construction of the applicator as shown in Holt prevents a similar result from happening. The Holt applicator has soft rubber applicators 25, which as shown in the drawings of Holt, prevent the Holt device from drawing and stretching fibrous tissue of the human body within the cavity as required by claim 1 and 15.

Physically, Holt cannot accomplish what is required by Applicant's claims, unless Holt is improperly modified using applicant's specification as a guide. Clearly, Holt or any other of the references does not suggest any such modification.

In addition, claim 1 and 15 further require that the connection tube be adapted to pass contaminants from the cavity and requires that the suction line draws contaminants from the cavity through the connection tube. Holt specifically has a "plate 28 which prevents this material from being drawn into the air passage, the said material being collected within the cup shape holder 20." Because applicants' device often is used with lotions which are applied to the body, a large amount of contaminants are drawn through the applicator into applicants' device. Removal of the plate 28, in the context of applicants' invention, would make Holt's invention inoperable in that the large amount of

contaminants used with applicants' device eventually would, it is respectfully suggested, foul the suction fan required for operation of the device. As the claims now set forth specific structure, which are not shown or described by the references, in any combination, neither claim 1 nor 15 properly can be rejected under 35 U.S.C. 103(a).

The only art that teaches the combination recited by the claims is applicant's own specification. But it is Hornbook law that applicants' specification cannot be used in hindsight to hold the claims obvious, because the claimed combination, as a whole, is not shown, or described by the art of record, whether it is considered singularly or in combination. Nor does the art relied upon by the Examiner suggest, in any manner or form, the structural combination required by the claims. As the Federal Circuit has repeated many times, 35 U.S.C. 103 requires an analysis of the claimed invention as a whole. While the invention may comprise a combination of old elements so arranged as to perform certain related functions, it is immaterial to the issue whether the elements were old in another context. What must be found to defeat the patent is the claim combination. *Gillette Co. v. S.J. Johnson Co., Inc.*, 119 F 2d, 720, 724 (Fed. Cir. 1990). The Examiner, apparently using applicants' specifications as a guide, has gathered art "stick by stick" to find applicants' invention obvious. Even with the hindsight provided by applicants' specification, however, none of the art, whether that art is considered singularly or in combination, suggests or shows the combination required by applicants' claims.

In view of the fact that the claims are believed to correct the formal deficiencies noted by the Examiner, and to be unobvious from that art, whether the art is considered

singularly or in combination, reexamination of the case, allowance of the claims and  
passage of the case to issue are respectfully requested.

Respectfully submitted,

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